

AMHERST PLANNING BOARD
Wednesday, September 3, 2008 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: Susan Pynchon, Acting Chair; Aaron Hayden, Jonathan O’Keeffe, Denise Barberet, Ludmilla Pavlova-Gillham, Richard Howland, Eduardo Suarez (7:40 PM)

ABSENT: Kathleen Anderson; Jonathan Shefftz

STAFF: Jonathan Tucker, Planning Director; Christine Brestrup, Senior Planner; Sue Krzanowski, Administrative Assistant

Ms. Pynchon served as Acting Chair and opened the meeting at 7:12 PM.

I. MINUTES - Meeting of July 16, 2008

Ms. Barberet noted minor typographical errors on pages 3, 4, 5 and 6.

Mr. Howland MOVED: to approve the Minutes of July 16, 2008 as corrected by Ms. Barberet. Mr. Hayden seconded.

Mr. Tucker suggested a wording change on page 4.

The Motion passed 6-0.

Meeting of August 6, 2008

Mr. Howland MOVED: to approve the Minutes of August 6, 2008. Ms. Pavlova-Gillham seconded.

Mr. Tucker asked the Board to hold off on its consideration of the Minutes because of potential revisions to the Decision. If the Board made revisions to the Decision, then the Minutes would also be changed.

Mr. Howland MOVED: to table his Motion to approve the Minutes of August 6th.

Because one of the five Planning Board members eligible to vote for the Amherst Enterprise Park Site Plan Review application was not yet present but was expected to arrive later, Mr. Tucker suggested that the Board postpone the public hearing until he arrived.

V. OLD BUSINESS

A. Signing of Decisions – SPR2009-00001, New England Environmental; SPR2009-00002, The Lord Jeffrey Inn

The Board signed The Lord Jeffrey Inn Decision as submitted. Mr. Tucker recommended that the Board might want to address and perhaps modify the conditions for New England Environmental. Mr. Tucker said that Condition #3 (A

low evergreen hedge shall be installed on the east side of Research Drive), will not provide adequate screening—an issue the Board had raised. He also suggested that for this reason the Board might wish to have a revised landscape plan submitted for Board review and approval. Ms. Brestrup noted that the Board should wait for Mr. Suarez to arrive so there would be an appropriate quorum of members taking action on this question.

IV. NEW BUSINESS

- B. Open Meeting Law & Conflict of Interest Training Session** – Mr. Tucker announced that the Board was invited to this training session scheduled for Monday, September 15, 2008 at 6:00 PM in the Town Room, Town Hall. Cynthia Pepyne from the Hampshire County District Attorney's Office and Mark Giannotti from the State Ethics Commission will be presenting. Mr. Tucker said that he highly recommended that members attend the session. At Mr. Howland's suggestion, the meeting will be posted as a Planning Board meeting.
- A. Correspondence – Public Works Committee Request** – Mr. Tucker summarized the Committee's request to make sure that adequate and appropriate bicycle parking is included in projects approved by the Board.
- C. Planning Commissioners Journal** – Mr. Tucker noted that there were several interesting and relevant articles which he thought the Board would find helpful.
- D. Other** – None

VI. FORM A (ANR) SUBDIVISION APPLICATIONS – None

Ms. Pavlova-Gillham asked when the Board would be receiving the draft comprehensive plan. Mr. Tucker said that the Comprehensive Planning Committee was meeting next week, and if the Committee found that the work was substantially complete, the plan would be submitted to the Planning Board. In the meantime, he said that he would email the current draft chapters to the Board.

VII. UPCOMING ZBA APPLICATIONS

The Board decided not to review the following applications:

ZBA2009-00010, 292 College Street – Amherst Tire Center, Inc.

ZBA2009-00011, 24 North Pleasant Street – EV Realty Trust

ZBA2009-00012, 21 Western Lane – Jeffrey Lerner

III. JOINT PUBLIC HEARING – SCENIC ROADS WITH TREE WARDEN & PUBLIC SHADE TREE COMMITTEE

South East Street (Map 17D/Parcel 24)

Ms. Pynchon read the preamble and opened the hearing for the proposed removal and/or trimming or pruning of the following public shade trees: One (1) Apple; Twelve (12) Black

Birch/Birch; Seven (7) Black Cherry/Cherry; Nine (9) Elm; two (2) Hickory; One (1) Katalpa; Forty-eight (48) Maple; Twenty-four (24) Poplar.

Michael Liu, landscape architect with The Berkshire Design Group and Scott Nielsen, applicant presented the proposal to the Board and Tree Warden.

Mr. Liu said that he walked the site with the Tree Warden and members of the Public Shade Tree Committee. The majority of trees to be removed are Norway Maple, which is on the state list of invasive species. Mr. Liu said that approximately 104 trees would be removed and replaced with native species and evergreens which would be interspersed among the street trees. Although it would not be a one-for-one replacement, he said the species proposed would provide a very adequate shade canopy and would be favorable to wildlife and aesthetics.

Mr. Nielsen said that he would be managing the Town's stormwater as part of the proposal. He also told the Board that he would provide approximately 34 street trees in the Town's right-of-way and others on the private drive within the development.

Mr. Liu said that the Public Shade Tree Committee indicated their approval of the plan.

Ms. Pavlova-Gillham asked about elevations and if the proposed shade trees might impact the future incorporation of solar panels.

Mr. Nielsen said that they did not consider solar panels and Mr. Liu said that they chose trees that will not obstruct the view of the Pelham Hills to the east.

Mr. Suarez apologized for his late arrival and expressed his concern that the maps provided in the Board's packet were not color-coded as the one Mr. Liu was presenting to the Board. Mr. Liu and Mr. Nielsen said that they were unaware that they would need to provide copies and there had not been enough time to get color copies for the Board.

Ms. Barberet asked if a sidewalk would be constructed. Mr. Liu indicated the sidewalk location on the plans.

Carol Gray, 815 South East Street, told the Board that granting approval for the proposed tree removal would be very premature because the Special Permit has not yet been granted and Massachusetts DEP is still considering an appeal regarding stormwater management. Appeals can take 3 or more years, Ms. Gray said, and there is no need to rush to do the rather dramatic changes proposed to the landscape. The removal of 104 trees would be in the opposite direction of where the Town should be going in light of the efforts of the 250th Anniversary Committee to replace trees. Ms. Gray urged the Board and Tree Warden to table the proposal until the permit is granted and all appeals are finished.

Mr. Tucker explained the Shade Tree and Scenic Roads Acts and said that applicants had a right to file for permits under those acts independent of other permits.

Otto Stein, Public Shade Tree Committee, said that the Public Shade Tree Committee conducted a site visit but did not vote because there wasn't a quorum.

Mr. Rob Kusner, 49 Van Meter Drive, urged the Board to require a bond if the request is approved.

Mr. Nielsen said that his replacement plan is far superior to the existing trees, and consists of native species, rather than the numerous invasive exotic trees currently in the right-of-way. He said that he will guarantee the trees in the right-of-way for three years. The standard is one year, he said. Mr. Nielsen told the Board that he has no intention of removing any trees until his permits are approved.

Mr. Suarez said that the accompanying development plan goes against the recommendations in the comprehensive plan to focus development in village centers. He also said Mr. Nielsen should get his Special Permit before submitting his tree removal request.

Alan Snow, Tree Warden, said that the Public Shade Tree Committee conducted a very lengthy review and had voted to recommend approval of the plan.

Ms. Gray again urged the Board and Tree Warden to condition approval on the granting of the Special Permit and finalization of all appeals.

Mr. Howland spoke in favor of the plan saying that it was reasonable and would enhance what is there. The Board should do what is in its jurisdiction and make a decision using appropriate conditions, he said.

Mr. Howland MOVED: to close the public hearing and address the situation. Mr. Suarez seconded.

Tanya Cushman, Leverett, asked how long it takes toxins from Norway Maples to leave the ground so other things can grow. Mr. Hayden replied that it was acidity from the trees' decomposing leaves that affected other plants, and this led to dense stands of Norway maples with few other plants.

The Motion passed 7-0.

Mr. Howland MOVED: to approve the public shade tree removal of the trees indicated on the plans submitted subject to the condition that trees that do not survive within 1 to 3 years shall be replaced and the stipulation that no work shall begin until all pertinent permits are approved and appeals exhausted. Mr. Suarez seconded.

Mr. Hayden said that the trees in the right-of-way are the Board's jurisdiction. Many of them are invasive and will be replaced under the proposal with native species. The Board should focus on what would be removed and what it would be replaced with, he said.

Ms. Pavlova-Gillham took issue with Ms. Gray's characterization of the removal of 104 small diameter and invasive species trees as being not in accordance with sustainability principles.

She said that when undergrowth isn't tended, it becomes invasive, something that native American tribes understood and practiced, as evident by early settlers' accounts that they could drive a cart through native forests.

She applauded the property owner for a proposal which evidences good stewardship practices and fully supported his request.

The Motion passed 7-0. Mr. Snow conferred that he was perfectly comfortable with accepting the proposal.

II. PUBLIC HEARING – SITE PLAN REVIEW APPLICATIONS

SPR2008-00003, Amherst Enterprise Park – Andrews & LaVerdiere

Request to construct a 24,700 s.f., three-story, masonry construction, climate-controlled storage facility with access drive and parking on 5.6 acres on Meadow Street. (Map 4D/Parcel 8, LI and FPC zoning districts) [continued from 04/02, 05/20, 06/04, 06/18, 07/16, 2008].

Ms. Pynchon noted that this was a continuation of a hearing from July 16, 2008. Ms. Pynchon also noted that the applicant had requested approval withdraw the application without prejudice.

Mr. Tucker noted that the Planning Board had asked for input from Hadley and Amherst conservation and agriculture boards and since members of those boards were present, the Board might choose to hear from them. Their comments would then be available in the minutes for the next filing, he said.

Ms. Brestrup noted that a re-filing of the application would be a new application and subject to the public hearing process, and therefore, testimony given during this hearing would not be allowed.

Mr. Howland said that he would recuse himself from participating in tonight's hearing, but thought the Board should grant the applicant's procedural request to withdraw. People will make an effort to come to a future meeting to speak, he said.

Board members Suarez, Barberet, Pavlova-Gillham and Hayden wanted to hear from those present. Mr. O'Keeffe said that it would almost be a disservice to take testimony with the anticipation that a new application is expected. Plans can change, he said, and it would be a new and different public hearing.

Ms. Pynchon said that she was inclined to hear comments with the understanding that a request for withdrawal has been submitted.

Mr. Howland stepped down from the Board and left the meeting at 8:50 PM.

Sarah Swartz, 11 Meadow Street, Amherst Agricultural Commission, referred to a letter to the Planning Board from the Agricultural Commission, strongly opposing the proposal. Ms. Swartz highlighted the Commission's concerns as outlined in the letter (To: Planning Board, From: Bob Saul, Agricultural Commission, Date: Friday, May 16th) and said that this particular development is not conducive to agricultural land.

David Ziomek, Director of Conservation and Development, told the Board that Alexandra Dawson, Chair of the Hadley Conservation Commission, had been present but had to leave because it was getting late. Ms. Dawson will forward their concerns. Mr. Ziomek noted that the Amherst Conservation Commission had previously submitted a memo with their concerns (August 28, 2008,

To: Amherst Planning Board, From: Amherst Conservation Commission, letter written by Interim Chair, John Gerber).

Carol Gray, 815 South East Street, said that she was confused why the applicant was requesting withdrawal when a quorum was present. Ms. Gray expressed concerns about the amount of testimony and time spent on the application and suggested that the Board seek Town Counsel's opinion. Ms. Gray also suggested that the Board should deny the permit or approve the withdrawal with prejudice. The proposal is too large and inappropriate for the site, she concluded.

Tanya Cushman, Leverett, said that she will continue to be passionate about it if it comes back.

Joe Waskiewicz, abutter, commented that there are a lot of storage facilities in the area but they are only one story.

Ruth Feldberg, West Pomeroy Lane, said she hopes the Planning Board denies the Site Plan. The J & J Farm is the last dairy farm in Amherst and the cows should be protected from the impacts of this development. Ms. Feldberg said that Meadow Street is already very busy and urged the Board to require a traffic study.

Mr. Hayden MOVED: to close the public hearing.

In response to questions from Ms. Barberet, Mr. Waskiewicz said that the barn is currently being used to dry tobacco and the closeness of the storage facility will affect the circulation in the barn.

Mr. LaVerdiere said that the proposed height of the storage facility is 36 feet.

Jaime Tidlund, Amherst Agricultural Commission, said that the site is surrounded by APR land. The Town has invested a lot of money in preserving the area and the new building would detract from it. Mr. Tidlund also expressed concern about traffic impact on slow-moving farm vehicles.

John Devine, Devine Farms, Inc., said his farm is across from the Waskiewicz farm. Mr. Devine said that all the land around the storage facility has been preserved. The new building would destroy the beauty of the surrounding area, he said.

Mr. Ziomek explained the Agricultural Preservation Restriction (APR) program. He introduced Rick Chandler, APR representative. Mr. Chandler told the Board that the parcel was considered for an Agricultural Preservation Restriction (APR) approximately 20 years ago. However, he said there are a number of trees on the property and it is no longer an active farm. In its current state, Mr. Chandler said it would not rank highly on the APR list. Mr. Chandler noted that his territory is Hadley, not Amherst. Drainage is a key factor, he told the Board and changes to this property may affect surrounding properties.

Ms. Swartz said that a lot of farms will be affected by what happens on this parcel. She listed the farmers in the area. The Mill River floods, she said, and this postage-size piece of land is the threshold for the Mill River for a number of farms. It only takes one flood to damage soils

nearby and downstream as a result of flood-caused pollution, she said. Ms. Swartz said the Town should seek funding to preserve the land.

Mark Power, former Town Meeting member, said that he was instrumental in bringing an FPC proposal to Town Meeting. Mr. Power said he thought Town Meeting allocated \$210,000 to purchase the parcel and asked where the money was.

Mr. Hayden noted that the Board's job is to consider the proposal before it.

Mr. Suarez said that he is very concerned with some of the evidence that has been presented. He likes the proposal, but it's in the wrong place, he said. Mr. Suarez asked on what basis the Board could deny the application.

Mr. Tucker explained the process and reiterated Town Counsel's opinion which had been emailed to the Board.

Ms. Barberet asked the applicant to provide reasons for the withdrawal request.

Bill Garrity, Landscape Architect, said that the team is still working to resolve a couple of issues, 1) the drainage ditch, 2) stormwater management issues with the Town Engineer, 3) easements. The Conservation Commission is expected to vote on an Order of Conditions at their next meeting, he told the Board.

Pat Wagner, Amherst Agricultural Commission, asked if aesthetics could be the reason for denial.

Mr. Tucker used Town Counsel's letter to explain the process and what constituted legitimate grounds for denial of a Site Plan Review approval.

Ms. Pynchon said the Board needed to move on.

Mr. O'Keeffe seconded the Motion to close the hearing.

Mr. Hayden said that he really appreciated all the public input in helping the Board to make decisions.

The vote on the Motion was 4-0-1 (Suarez abstained; Pavlova-Gillham not participating).

Mr. Hayden MOVED: to accept the applicant's request to withdraw without prejudice. Mr. O'Keeffe seconded.

Mr. Suarez said that the Town does need this but not in this location. He said he would like an assessment from someone at UMass. More information is needed on the hydrology in the area.

Mr. Hayden said that he would support the withdrawal request so those issues could be addressed with the re-filing.

Ms. Barberet said that she hoped to see something new with the new application.

Mr. O’Keeffe said that while he doesn’t want to encourage applicants to withdraw just “to stack the Board”, this is an unusual situation with only five people eligible to vote (and one member staying past his term just to see this through). “It’s an anchor dragging on the Board at this point,” he said.

Ms. Pavlova-Gillham said that she would welcome the opportunity to review this as a new application which would give the Board more opportunity to craft appropriate conditions. She said the drainage ditch is a pivotal issue.

Discussion continued about what new information might be submitted with the new application and what appropriate conditions might be.

Ms. Barberet stated that she would prefer not to waive the filing fee for the new application.

The Motion passed 5-0-1 (Pavlova-Gillham abstaining).

Mr. Hayden MOVED: that the Board accept the other requests to maintain the current documents and records to be applied to the re-filing, and waive the filing fee.

Mr. Tucker said that the Board could wait until the application was re-filed before deciding how to respond to the applicant’s other requests. There was no second to the Motion.

Mr. Hayden MOVED: to waive $\frac{3}{4}$ of the fee.

After more discussion and no second, Mr. Hayden withdrew his motion.

IX. SUBCOMMITTEE REPORTS

A. Zoning – Mr. O’Keeffe said that the Subcommittee is working on four zoning amendments to bring to Fall Town Meeting. The first three all share a theme to increase density, he said. The amendments are: (1) Duplexes in R-G & R-VC; (2) B-G & B-VC Residential Density; (3) R-G & R-VC Residential Density; and (4) Open Space for Recreational Facilities. Another change the Subcommittee is considering is changing a restrictive covenant at 284 North Pleasant Street. Although this would not be a zoning “amendment” it would need to be brought to Town Meeting.

Mr. Tucker said that he would send copies of the proposed draft amendments to the Planning Board tomorrow. At Mr. O’Keeffe’s urging, Mr. Tucker also agreed to post the drafts on the website.

Mr. Suarez left the meeting at 10:30 PM.

XIII. ADJOURNMENT

Mr. Hayden MOVED: to adjourn this meeting at 10:31 PM. Ms. Pavlova-Gillham seconded, and the Motion passed unanimously.

Respectfully submitted,

Sue Krzanowski, Administrative Assistant

Approved:

Susan Pynchon, Acting Chair

DATE: _____